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Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*

Summary

The battle for control over Aleppo city was a stage of unrelenting violence, with civilians on both sides falling victim to war crimes committed by all parties. As part of a strategy to force surrender, pro-Government forces encircled eastern Aleppo city in late July and trapped civilians without adequate food or medical supplies. Between July and December 2016, Syrian and Russian forces carried out daily air strikes, claiming hundreds of lives and reducing hospitals, schools and markets to rubble. Syrian forces also used chlorine bombs in residential areas, resulting in hundreds of civilian casualties.

Armed groups persistently shelled civilians in western Aleppo city. Using improvised weapons, these groups often fired indiscriminately in attacks that killed and injured dozens, including women and children. When launched without a clear military target, these attacks intentionally terrorized the civilian population. As the situation deteriorated in eastern Aleppo and people tried desperately to flee, some armed groups violently prevented them and used them as human shields.

In a particularly egregious attack, Syrian air forces targeted a humanitarian aid convoy in Aleppo countryside, killing more than a dozen aid workers and destroying vital supplies for civilians in need. The convoy had been authorized by the Government of the Syrian Arab Republic, which was aware of its location at the time of the attack. The attack led to the suspension of aid convoys throughout the Syrian Arab Republic, depriving civilians from access to essential goods.

As pro-Government forces recaptured eastern Aleppo city in December, some executed here de combat fighters and perceived armed group supporters. Hundreds of men and boys were separated from their families and forcibly conscripted by the Syrian army. The fate of others remains unknown.

* The annexes to the present report are circulated in the language of submission only.

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The evacuation of eastern Aleppo city, amounting to forced displacement, leaves thousands of civilians in a perilous situation. While many civilians were permitted to move to western Aleppo, others were transported to Idlib, where they lack adequate living conditions and fear future attacks as warring parties continue to fight for control of territory.

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I. Introduction

1. The Independent International Commission of Inquiry on the Syrian Arab Republic submits the present report to the Human Rights Council pursuant to Council resolutions 31/17 and S-25/1. In its resolution S-25/1, the Council requested the Commission to, consistent with its mandate, conduct a comprehensive, independent special inquiry into the events in Aleppo, to, where possible, identify all those for whom there were reasonable grounds to believe that they were responsible for alleged violations and abuses of international human rights law.[1]

2. The Commission interpreted resolution S-25/1 as requiring it to investigate violations of international human rights law and international humanitarian law allegedly committed in Aleppo city and its environs by all warring parties between 21 July and 22 December 2016.

II. Methodology

3. The methodology employed by the Commission was based on best practices of commissions of inquiry and fact-finding missions.

4. The present report was prepared on the basis of 291 interviews, including those conducted remotely with residents of Aleppo city and governorate, and interviews conducted in person in the region and in Geneva.

5. The Commission faced numerous challenges during its investigation. Owing to the siege, interviews with residents of eastern Aleppo city could rarely be conducted in person. Interviews conducted remotely were regularly disrupted by ongoing clashes and other issues, including lack of electricity, poor telephone and Internet connections, and protection concerns.

6. The Commission collected, reviewed and analysed satellite imagery, photographs, videos and medical records. Communications from Governments and non-governmental organizations, and United Nations reports formed an integral part of the investigation.

7. The standard of proof was met when the Commission obtained a reliable body of information to conclude that there are reasonable grounds to believe the incidents occurred as described, and that violations were committed by the warring party identified.

III. Political context

8. The dramatic militarization of the conflict in Aleppo city since July 2016 has left an ever-limited space for political manoeuvring. The military considerations of warring parties and concerned States have superseded political initiatives aimed at reducing violence and providing humanitarian relief. Despite significant constraints, the Special Envoy of the Secretary-General for Syria, Staffan de Mistura, continued to press for initiatives to halt violence and to allow aid to reach eastern Aleppo.

[1] The commissioners are Paulo Sérgio Pinheiro (Chair), Carla Del Ponte and Karen Koning AbuZayd. Commissioner Vitit Muntarbhorn resigned from the Commission in September 2016 to assume the mandate of Independent Expert against violence and discrimination based on sexual orientation and gender identity.

9. The encirclement and siege of eastern Aleppo by pro-Government forces in July presaged further escalation of hostilities although the cessation of hostilities agreement of 9 September 2016, reached among the United States of America, the Russian Federation and the co-chairs of the International Syria Support Group, provided civilians much-needed respite from violence. The collapse of that agreement on 19 September was followed by a prolonged and intense Syrian and Russian aerial campaign over eastern Aleppo and a resumption of shelling by armed groups on western Aleppo. In October, a high-level meeting in Lausanne, attended by representatives of the Russian Federation, the United States of America and influential regional powers failed to renew the agreement.

10. In November, the Special Envoy of the Secretary-General called for an immediate pause in fighting and for the terrorist group Jabhat Fatah al-Sham (previously known as Jabhat al-Nusra) to leave Aleppo city in order to allow humanitarian assistance to be delivered to the besieged area. The Government of the Syrian Arab Republic rejected the Special Envoy's proposal for local administrations in eastern Aleppo to be kept intact, and a pause in fighting did not materialize.

11. The recapture of eastern Aleppo city by pro-Government forces on 22 December 2016 had an impact on conflict dynamics countrywide. While the ceasefire declared on 29 December 2016 succeeded in reducing levels of violence and was generally holding at the time of writing, it could introduce new dynamics affecting developments on the ground. The Russian Federation and Turkey are mediating talks in Astana between the Government of the Syrian Arab Republic and opposition military representatives, where the Special Envoy will be present. A delegation from the Islamic Republic of Iran will also attend. The Astana talks are intended to reinforce the countrywide ceasefire, reach an agreement on humanitarian assistance to besieged areas, and set the grounds for talks facilitated by the United Nations- and scheduled to be held in February 2017 in Geneva.

IV. Weaponry and capabilities of warring parties

12. Warring parties had varied capabilities, a fact that helped in the attribution of responsibility for specific incidents. The types of weapons and how they were used was also indicative of strategy and intent. The choices of methods and means of combat selected by warring parties in Aleppo governorate overall suggest a wilful disregard by all sides for international humanitarian law rules with regard to proportionality and distinction, or for the requirement to take all feasible precautions to avoid incidental loss of human life, injury or damage to civilian objects.

13. Throughout the period under review, the skies over Aleppo city and its environs were jointly controlled by Syrian and Russian air forces. The Russian Federation and the Syrian Arab Republic use predominantly the same aircraft and weapons, thus rendering attribution impossible in many cases. Although the international coalition also operated over Aleppo city, it did not conduct any offensive missions during the period under review. Armed groups lacked manned aircraft and were incapable of conducting conventional air strikes. While they did operate unmanned aerial vehicles (drones), only a handful were armed, and the majority failed to operate as intended.

14. Syrian and Russian air forces conducted daily air strikes in Aleppo throughout most of the period under review, exclusively employing, as far as the Commission could determine, unguided air-delivered munitions. These included aerial bombs, air-to-surface rockets, cluster munitions, incendiary bombs and improvised air-delivered munitions (barrel bombs), and weapons delivering toxic industrial chemicals, including chlorine. The Syrian air force has limited capability to conduct operations at night; most night operations were therefore conducted by the more capable Russian air force. The main airbases

supporting strike operations in Aleppo governorate were in Aleppo, Homs and Latakia. On 23 September, for example, Russian aircraft conducted 42 air sorties, making at least 28 confirmed air strikes in eastern Aleppo city.

15. The use of air-delivered cluster munitions increased during the period under review. Cluster munitions disperse smaller submunitions, which kill and injure over a wide area. In the case of some of the munitions observed, each cluster bomb dispersed more than 500 submunitions. As a result, Aleppo is now contaminated with significant quantities of unexploded ordnance.

16. Victims and witnesses frequently reported aerial attacks with "bunker-buster" bombs, known technically as concrete-piercing munitions. Only small numbers of these bombs were employed. Other highly explosive weapons used, particularly those with delay fuses, generated similar effects and could be easily mistaken for bunker-buster bombs by the layperson.

17. Throughout 2016, Syrian air forces launched air strikes using chlorine bombs in eastern Aleppo city. There is no information to support the claim that the Russian military ever used any chemical weapons in the Syrian Arab Republic. While civilians exposed to chlorine may exhibit symptoms similar to those exposed to vesicants, such as sulphur mustard, chlorine gas was identified as the most likely agent in several cases.

18. Both the Syrian forces and armed groups used improvised and craft-produced weapons. Improvised weapons, such as air-delivered munitions (including barrel bombs), rocket-assisted munitions and mortars, are relatively inaccurate and imprecise, and are often highly explosive. Large improvised air-delivered munitions were employed solely by the Syrian air force. Improvised rocket-assisted munitions and mortars were primarily employed by armed groups. The use of both resulted in extensive civilian casualties.

19. Armed groups, which were not in control of the skies, used an array of improvised mortars. Many of these, including a common spigot mortar widely referred to as Jahannam or the "hell" cannon, employ cooking gas pressure vessels as projectiles. Broadly speaking, these mixtures are capable of producing blasts equivalent to 22 to 33 kilograms of TNT. A typical example may produce a fatal blast pressure up to 15 metres from the site of detonation, and injurious blast effects extending up to 40 metres. Most projectiles from these weapons travel 400 to 600 metres.

20. Armed groups also frequently employed indirect fire,[2] primarily by artillery systems. In numerous cases, these weapons were used to attack targets located amid concentrations of civilians, amounting to indiscriminate attacks. In other cases, armed groups intentionally applied indirect fire against enemy-held territory without targeting specific military objectives. The use by Syrian forces and armed groups of guided munitions in Aleppo appears to have been limited to anti-tank guided missiles to attack buildings and vehicles.

V. Eastern Aleppo city

A. Establishment of a siege

21. Once the country's economic capital and most-populated city, Aleppo remained of major strategic importance to all parties. In 2012, the city was effectively divided in two

[2] Direct fire relies on a direct line of sight to the target, while indirect fire does not. To be accurate, indirect fire should employ an observer to correct fires.

when armed groups captured the eastern swathe, while the west remained under Government control. Mostly self-governed by local councils, eastern Aleppo remained a key opposition stronghold, and the battle for its control was widely regarded as potentially decisive for the broader Syrian conflict.

22. After three years of military impasse, in September 2015 the Russian Federation began to bolster government forces on several key battlefronts, and offered a realistic opportunity to break the deadlock, including in Aleppo, where air strikes were used with the overarching goal of besieging eastern Aleppo city. Across Aleppo and Idlib governorates, air strikes in the last months of 2015 forced armed group elements out of eastern Aleppo and into the countryside, weakening the city's defences. In early 2016, air strikes on the towns of Nubul and Zahra, north of Aleppo city, cut off an essential supply line from Turkey and prevented the reinforcement of armed groups. Throughout that period, eastern Aleppo city experienced constant aerial bombardment, which destroyed hospitals, schools, mosques, bakeries and homes.

23. Air strikes alone were not sufficient, however, for pro-Government forces to besiege eastern Aleppo. Success of the encirclement was equally dependent on the Government mobilizing sufficient manpower on the ground. Lacking enough troops, the Syrian army, including the 4th Mechanized Division, turned to national militias, such as the Ba'ath Brigades, the Tiger Forces and the Liwa al-Quds Brigade, as well as members of foreign militias, to increase its ground offensive capacity. These included the Army of the Guardians of the Islamic Revolution (Iran Revolutionary Guards Corps) al-Quds Force, Hizbullah, Afghan militias and the Iraqi al-Nujabaa and al-Fatimiyoon militias (pro-Government forces). These groups led the ground-offensive to besiege eastern Aleppo city.

24. Armed with at least 5,000 fighters on the ground and strong air support, pro-Government forces had the necessary resources to encircle eastern Aleppo city. By mid-July 2016, the only remaining supply line into the city, the Castello road in the north, was captured by pro-Government forces. Using a combination of air and artillery strikes, pro-Government forces bombed the road daily, killing and injuring those who attempted to use it. When pro-Government forces gained control of the Castello road on 17 July, eastern Aleppo city was effectively besieged. In August, armed groups broke the siege by opening a route in the southern district of Ramouseh though a counter-offensive by pro-Government forces in early September retook the supply line and re-established the siege, which lasted until the recapture of eastern Aleppo in December.

B. Attacks on civilian infrastructure

1. Impact on civilian life

25. On both sides of the city, civilians paid the highest price for the brutality of violence that assailed Aleppo. In eastern Aleppo, pro-Government forces pummelled vital civilian infrastructure, with disastrous consequences. Day after day, hospitals, markets, water stations, schools and residential buildings were razed to the ground. Fearing bombardments, civilians avoided hospitals, including pregnant women, who increasingly gave birth at home without medical assistance or opted for caesareans to avoid hours in labour in hospital. In western Aleppo, civilians lived in fear of indiscriminate and deliberate shelling by armed groups. Throughout Aleppo, bombardments of residential buildings disproportionately affected those who typically spent more time at home: women and children.

26. Even prior to the siege, civilians in eastern Aleppo city lacked sufficient food, medication and fuel. The permanent severing of supply routes resulted in exorbitant food prices, which made it impossible for many families to purchase more than rice and bulghur.

Bombardment of water stations forced the population in the east to drink water from boreholes, risking the contraction of waterborne diseases.

27. Launched on 23 September 2016, the aerial bombardment campaign of eastern Aleppo drastically increased civilian casualties. Approximately 300 people – including 96 children – were killed in the first four days of the offensive alone. By mid-October, a lack of resources and medical supplies forced doctors to amputate limbs, which might have otherwise been saved.

28. On 14 November, government artillery fire reportedly struck an orphanage providing shelter for 50 children in Salah al-Din district, injuring two boys aged 11 and 14 years. The children were subsequently moved to a basement, where they remained trapped for weeks. After several attempts, they were evacuated on 19 December.

29. Conditions significantly worsened in December, when all hospitals were bombed out of service. Residents were concentrated in ever-shrinking territory, where they lived under aerial attacks, and with insufficient food, water and heating. Without medical facilities, several families had no choice but to leave the bodies of their dead and injured relatives in the streets. Many suffer from trauma and guilt for having survived the violence.

2. Hospitals

30. Between July and November, air strikes repeatedly struck health-care facilities in eastern Aleppo, continuing the pattern observed in the first half of 2016 (A/HRC/33/55, paras. 44-49). By the time pro-Government forces recaptured the city in late December, no hospitals were left functioning. The majority of attacks were conducted in two waves: between late September and mid-October, and in mid-November. The attacks assessed below were carried out by either the Russian air force or the Syrian air force, or both.

31. Hospitals, ambulances and medical personnel are afforded special protection under international humanitarian law (see annex I, para. 36). While they may be made the object of attack when used for military purposes, such attacks require prior warning (ibid., para. 39). In the incidents investigated by the Commission, however, there was no indication of the presence of military targets or of warnings being issued prior to attack. The display of an emblem to signify a location's protected status is not required in conflicts where hospitals are deliberately targeted (ibid.).

32. Repeated bombardments, lack of warnings and the absence of military presence in the vicinity of the health-care facilities strongly suggest the deliberate and systematic targeting of medical infrastructure as part of a strategy to compel surrender, amounting to the war crime of intentionally targeting protected objects (ibid., paras. 36-39). Furthermore, deliberate attacks against medical staff and ambulances amount to the war crimes of intentionally attacking medical personnel and transport (ibid., para. 39).

33. Located next to the Khalid Ibn Waleed mosque, the M10 hospital in al-Sakhour district served as the largest trauma hospital. Air strikes hit the hospital on four occasions between late September and mid-October, putting it out of service. On 28 September, at approximately 4 a.m., an air strike hit the vicinity of the M10, killing a 12-year-old boy and injuring his father. The air strike damaged the intensive care unit and destroyed the generators, fuel storage and water tanks. Witnesses described the use of barrel bombs, and a large crater believed to be the result of a bunker-buster bomb. A video of the aftermath reveals two unexploded ShOAB-0.5 sub-munitions, indicating the use of an air-delivered RBK-500 cluster bomb.

34. On 1 October, at around 11 a.m., a series of barrel bombs struck the M10, forcing more than 100 people, including patients and medical staff, to take refuge in the basement of the hospital. Two patients were killed and at least 13 others injured. The attack also

destroyed an ambulance and caused the hospital to suspend its services. The attack reportedly involved one bunker-buster bomb, cluster munitions and chlorine. Witnesses described a 20 metre-wide crater, which they believed had resulted from a bunker-buster bomb, and satellite imagery confirms a crater consistent with an aerial bomb.[3] The nature of other air strikes throughout Aleppo, including a later air strike affecting the M10, support witness claims that multiple types of munitions were employed in rapid succession.

35. Further allegations regarding the use of chemicals (likely chlorine) on 1 October are also supported by victim accounts. One ambulance worker described how he and others experienced difficulty breathing after a bomb with a "strong smell" was dropped. Others described seeing yellow powder, which is consistent with chlorine residue. Images of the aftermath show remnants of a PTAB-1M cluster munition carried by an RBK-500 cluster bomb containing 268 sub-munitions. The presence of an improvised air-delivered munition with a chemical payload strongly suggests that the attack was conducted by government forces. In addition to the war crime of intentionally targeting protected objects, the attack amounts to the war crime of indiscriminate attacks against the civilian population (see annex I, paras. 20-23).

36. On 3 October, the M10 sustained further damage occasioned by a near-miss of an aerial bomb. The hospital was still out of service as a consequence of the attack conducted on 1 October, though workers were already on-site making repairs. Between 2 and 3.30 p.m., a high-explosive munition hit the street of the hospital entrance, killing three maintenance workers and injuring four medical staff, and destroying the maternity ward. Eyewitnesses described a 20 metre-wide crater. Analysis of the primary crater indicated that a munition in the 500 to 1000 kg class or larger had likely been employed. When employed with a delay fuse, these bombs can produce large craters and extensive blast damage consistent with that observed at the site.

37. The M10 was hit for the fourth time on 14 October. At approximately 2 p.m., multiple unitary high-explosive aerial bombs struck the entrance of the hospital, severely burning two doctors and a pharmacist. A medical worker present at the time recalled that oxygen cylinders stored in the basement caught fire as a result of the strike.

38. Between July and November, Syrian or Russian forces launched a series of air strikes on a square in al-Shaar district, where al-Hakim paediatric hospital, al-Zahra women's hospital, al-Bayan hospital, al-Daqaq clinic and the central blood bank were located. As the only children's hospital in eastern Aleppo, multiple air strikes on al-Hakim hospital had a devastating impact on children's access to health care. On 23 July, an air strike damaged the building and caused a power cut, that led to the death of four newborns in incubators. In an attempt to protect patients, the hospital was moved underground. Until this point, all hospitals in al-Shaar had been clearly marked, after which emblems were removed out of fear of being targeted.

39. On 30 September, at around 5.30 a.m., at least one air strike hit the vicinity of al-Hakim, destroying an ambulance and killing an ambulance driver. Another air strike on 16 November partially destroyed the hospital and killed 27 people in the area. Two days later, on 18 November, the hospital was struck again while patients of a suspected chlorine attack

[3] See Operational Satellite Applications Programme (UNOSAT) satellite imagery analysis on the webpage of the Commission at www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx.

in the Ard al-Hamra district were being treated. A "double-tap" attack[4] was carried out within minutes, forcing the hospital to cease operating (see annex I, para. 49).

40. Medical staff confirmed there were no military installations in the area of al-Hakim hospital. One source admitted that wounded fighters received medical treatment in the same hospitals as civilians, but denied the presence of military targets around the hospital. The treatment of wounded fighters does not render a hospital a valid military objective (ibid., para. 37).

3. Food sources

41. Repeated attacks against markets, bakeries and other food sources indispensable for civilian life have been a hallmark of the prolonged siege laid to eastern Aleppo city, violating the right to regular, permanent and unrestricted access to sufficient food (see annex I, para. 11). The total number of markets and bakeries attacked from the air during the period under review is indicative of a pattern on the part of pro-Government forces of intentionally violating this right by targeting civilian infrastructure in order to compel the surrender of armed groups (ibid., para. 35).

42. On 28 September, shortly before morning prayers, at approximately 3 a.m., an air strike carried out by either Syrian or Russian air forces struck a bakery in al-Maadi district while inhabitants lined up to purchase bread. The bakery, which had previously served two neighbourhoods and fed almost 6,000 families, was completely destroyed. Eight civilians, including one of the owners, were killed during the attack, and at least 19 others were injured. Two days later, on 30 September, more than 15 civilians were killed in al-Haydaria, when the Azizi bakery was hit by an air strike. The owner of the bakery again was among those killed during the attack. By mid-October, the besieged eastern Aleppo pocket had seven functioning bakeries after those in al-Maadi, al-Magayer and al-Mashhad districts were bombed out of service.

43. On 12 August, in al-Firdous district, between 4 and 5 p.m., Syrian or Russian forces conducted an air strike on a crossroads where the Firdous vegetable market was located. The market had been already been attacked by air strikes five times. About five minutes after the attack, pro-Government forces returned to carry out a "double-tap" attack (ibid., para. 49). Twenty civilians were killed as a result of the attacks, and dozens more were injured. On 13 October, at approximately midday, al-Firdous market was again hit by an air strike. Fifteen civilians, including at least one child, were killed during the attack and at least 30 others injured. As the attack took place during midday prayers, most victims present were adult males. The blast penetrated three metres deep into the ground and damaged a water main, affecting the civilian population's access to water in al-Firdous district.

4. Water sources

44. During the period under review, the lack of potable water drastically reduced the access of Syrian men, women and children to sanitation and hygiene, and increased the risk of infectious and waterborne diseases. The human right to water, indispensable for leading a life in human dignity, is an essential prerequisite to the realization of all other human rights (see annex I, para. 12).

[4] A "double-tap" air strike is one in which a second attack on a target/area follows shortly after the first, having the effect of killing and injuring those who came to provide aid to, mourn or remove bodies of the victims of the first attack.

45. On 31 July, intensified clashes damaged the electricity transmission station that facilitated power for pumping water to both eastern and western Aleppo city. Even though technicians were able to install a tributary power line on 4 August, the line sustained damage the next day. By 9 August and during a period of intense heat, approximately 1.7 million people throughout Aleppo city were left without access to running water.

46. On 22 September, one or more air strikes carried out by either the Syrian or the Russian air force hit the water substation in the Bab al-Nayrab district of eastern Aleppo city, rendering it out of service and leaving up to 200,000 civilians without potable water. Owing to the intensity of clashes in the area at the time, it is not possible to determine whether the attack was intentional. Though the station was repaired by local authorities on 30 September and resumed service shortly thereafter, civilians in eastern Aleppo recalled having to resort to highly contaminated well water for domestic use. While the Syrian Arab Red Crescent (SARC) provided purification tablets to sterilize contaminated water obtained from boreholes, the Government's total blockade of aid delivery after July made such tablets scarce. Moreover, fuel intended to be used for heating in November and December was instead used to pump water from wells.

47. On 23 September, the Suleiman al-Halabi pumping station located in the east was switched off, preventing water from reaching 1.5 million people in the western neighbourhoods of Aleppo city. On 26 September, the Directorate of Water and Sewage in eastern Aleppo released a statement denying its involvement in what it deemed an "electrical dysfunction". During that time, however, civilians in western Aleppo were able to benefit from ground water wells, which provided a safe, temporary alternative water source.

5. Schools

48. During the period under review, air strikes carried out by Syrian and Russian forces had a disparate impact on educational institutions throughout eastern Aleppo city, where a third of the population were children (see annex I, paras. 13-15). Schools may only be the object of attack when used for military purposes, and such attacks require prior warning when the school is located in a densely populated civilian area (ibid., para. 22).

49. On 19 August, at approximately 5 p.m., in Salah al-Din district, Syrian or Russian air strikes hit the Abdulqader Shasho school and an attached mosque. The Salah al-Din district was an active frontline at the time, with approximately half of the district under armed group control and the other half under Government control. While the Abdulqader Shasho school was not in session at the time, four adults were wounded during the attack. The ceiling of the school sustained partial damage, while the mosque was razed. The school remained operational for a short period thereafter, with students transferred to underground classrooms. By September, the school was relocated within Salah al-Din for the safety of students.

50. In early September, the relocated Abdulqader Shasho school was hit by an air strike. At the time, classes were held for grades 1 to 9, with younger pupils attending morning classes. Nine elementary school children were killed during the attack, and dozens more wounded.

C. Use of prohibited weapons

51. From September onwards, the number of incidents involving prohibited weapons rose to new levels, with allegations of the use of chlorine, cluster munitions and incendiary munitions the most widely reported. Coinciding with bombardments of hospitals, the

increased use of these weapons disproportionately affected civilians by compounding the suffering of victims prevented from obtaining adequate treatment.

52. The Commission investigated numerous incidents of allegations of improvised chlorine bombs dropped from helicopters, which resulted in civilian casualties. In none of the incidents reviewed did information gathered suggest the involvement of Russian forces. Given that the incidents reported were all the result of air-delivered bombs, it is concluded that these attacks were carried out by Syrian air forces. The use of chlorine by Syrian forces follows a pattern observed in 2014 and 2015 (see S/2016/738).

53. In addition to violating the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (see annex I, para. 40), the use of chemical weapons in residential areas, including chlorine bombs which are incapable of distinguishing between civilian and military targets, constitute war crimes (ibid., paras. 41-42).

54. On 6 September, at approximately 1 p.m., an improvised chlorine bomb was air-delivered in al-Sukkari district. A man and a 13-year-old girl died as a result of asphyxiation, while more than 80 civilians suffered from the effects of chlorine inhalation. Eyewitnesses saw helicopters hovering in the sky when the bomb was dropped, while those in the vicinity began suffocating and their eyes became red shortly afterwards. Witnesses further reported a strong odour resembling domestic detergents. Available footage shows individuals, including women, children and an elderly man, receiving oxygen, and remnants of the improvised chemical munition. The attack was carried out by Syrian forces.

55. Between 8 and 12 December, reports of toxic chemicals being dropped in al-Kalasa neighbourhood emerged daily. One physician treating victims of the attack on 8 December in Al-Kalasa recalled he also treated patients from the Bustan al-Qasr and al-Firdous districts that day. Eyewitnesses saw bombs being dropped by helicopters at around 4 p.m. and a yellow gas leak from the barrels. A pungent accompanying odour was also reported. Thirty-five victims, including women and children, reportedly suffered from symptoms consistent with chlorine inhalation, including hypoxia, bronchospasms and respiratory failure.

56. On 9 December, at around midday, two improvised bombs with chlorine payloads were dropped in Al-Kalasa and Bustan al-Qasr. Thirty civilians suffered from effects consistent with chlorine exposure, and footage obtained confirms children struggling with shortness of breath and teary eyes. On 10 December, doctors reported treating patients from Bustan al-Qasr with similar symptoms. On this occasion, improvised chemical bombs were used directly on al-Hayat clinic, which had been treating victims of chlorine attacks over the previous days. Medical staff and patients suffered symptoms consistent with chlorine exposure, and footage and images assessed are consistent with an air-delivered improvised chlorine bomb.

57. From September onwards, an alarming number of incidents involving cluster munitions were also reported. Although the Syrian Arab Republic is not a party to the Convention on Cluster Munitions, the use of cluster munitions in densely populated areas is inherently indiscriminate (given the typically wide dispersal pattern and high dud rate, which continues to endanger civilians years after a cessation of hostilities) and therefore prohibited by customary international humanitarian law. For this reason, their use in cities such as eastern Aleppo constitutes the war crime of indiscriminate attacks in a civilian populated area (ibid., para. 44).

58. A resident of Karm al-Qaterji district reported being woken up by an explosion on 14 October, at around 4 a.m.. He and his brother went outside to find buildings on fire. While helping to put out the fire, they saw an aircraft drop a bomb that "exploded in the air" and released a number of sub-munitions, one of which killed the resident's brother.

Photographs of remnants shared by the witness reveal a Russian ShOAB-0.5 bomblet from an RBK-500 series cluster bomb carrying 565 sub-munitions.

59. Syrian and/or Russian forces also used cluster incendiary munitions in eastern Aleppo. While the Syrian Arab Republic has not ratified the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects or the Protocol III thereto prohibiting the use of incendiary weapons, the use of such weapons in a civilian populated area constitutes the war crime of indiscriminate attacks, and means and methods of warfare which cause incidental loss of life (ibid., para. 45). In addition to international humanitarian law obligations, the Russian Federation has been a party to the Convention since 1982, when it was ratified by the Soviet Union.

60. A resident of al-Mashhad neighbourhood described how, on 25 September, three munitions were released from an aircraft over the street where he lived. Upon release, the first munition spread "metal balls" over a 200-metre area. This testimony was consistent with photographs of remnants provided by the witness, which were identified as belonging to a ShOAB-0.5 submunition delivered by an RBK-500 containing 565 bomblets. Another photograph from the attack reveals the remnant of a Soviet ZAB-2.5SM incendiary submunition.

D. Attacks behind the frontline

61. During the period under review, residents throughout eastern Aleppo city recalled the abuses they witnessed living under the control of armed groups, including Harakat Nour al-Din al-Zenki, Jaish al-Mujahedeen, Aljabha al-Shamiya, Failaq al-Sham, Ahrar as-Sham, Fastaqim Kama Umirt Union and Sultan Murad Brigade, among other factions. The full force of their strength comprised between 6,000 and 8,000 fighters. The presence of terrorist group fighters from Jabhat Fatah al-Sham consisted of between 150 and 200 militants, although their influence manifested much more effectively owing to their operational capacity coupled with the fear that they engendered from other groups. Allegations included favouritism concerning the distribution of humanitarian aid, a nepotistic approach to dispute resolution, the denial of freedom of movement, the use of human shields, the use of civilian buildings for military purposes and the overall, general and constant fear of reprisal by armed groups.

62. There does not appear to have been any single chain of command between the various armed groups operating in eastern Aleppo city during the imposition of siege. While armed factions established an operations room, known as "Fatah Halab", in April 2015, it was scarcely operational. Coordination among armed groups diminished, morale weakened and infighting grew as they steadily lost ground to government forces. By 1 December, just prior to the recapture of eastern Aleppo by pro-Government forces, remaining armed groups in the south-eastern Aleppo pocket announced a new merger, with Jaysh Halab replacing Fatah Halab. The merger was, however, short-lived as armed groups ceded eastern Aleppo city after five months of attrition on 13 December.

63. Shortly after the siege was laid, some armed groups began to confiscate and hide food items that had previously been available throughout most districts. While many civilians, including those sympathetic to armed groups, were aware that they were stockpiling food, most felt powerless to confront them. Residents recounted a surge in prices for items still available for purchase in shops. Some armed groups distributed food and aid preferentially to those within their ranks, their family members and confidants over civilians. For the remaining population, minimal food assistance was occasionally circulated. Some residents believed that, by mid-September, armed groups had rejected the

possibility of United Nations aid for political gain, in protest against a ceasefire agreement brokered between the United States of America and the Russian Federation that did not include the input of armed groups. By December, when pro-Government forces recaptured Aleppo city, a number of storage sites where armed groups kept and guarded stockpiles of foodstuffs were discovered.

64. In an effort to govern residents of eastern Aleppo city, armed groups implemented a system whereby complaints could be registered at a designated premises run by fighters. Inhabitants spoke of an ad hoc and nepotistic approach to dispute resolution, where the concerns of sympathizers and fighters' relatives were prioritized over those of civilians without sufficient connections.

65. Through intimidation, certain armed groups prevented civilians from leaving hotly contested districts, including al-Firdous, during the siege. By preventing civilians from leaving, armed groups attempted to render parts of al-Firdous immune from further attack by using civilians as human shields (ibid., paras. 46-47). Residents recounted how women were prevented from leaving al-Firdous on threat of being killed. One young woman recalled how armed group fighters had killed her husband when he tried to leave in late September.

66. In October, as part of a humanitarian pause brokered by the United States of America and the Russian Federation, government forces began circulating details on television and via loudspeakers about a potential evacuation for civilians and fighters. Some armed group members warned civilians that the eight humanitarian corridors proposed were a pretext for the Syrian army to forcibly conscript new recruits into their ranks; for example, residents of al-Firdous district insisted that fear inhibited civilians from leaving, as armed group fighters coexisted with civilians and were "everywhere in the streets". By late October, armed groups attempted to impose an 8 p.m. curfew on civilians in various districts throughout eastern Aleppo city in an effort to control their movements and to prevent their escape after dark. Civilians who decided to stay feared either retribution for attempting to flee or revenge by government forces once they reached areas under their control.

67. In late November, before Masaken Hanano was retaken by the Syrian army, Jabhat Fatah al-Sham terrorists actively prevented civilians from leaving the district. The terrorist group arbitrarily arrested at least two civilians who attempted to negotiate the ability for civilians to exit, on the charge of inciting people against the terrorist group. The whereabouts of the two civilians remains unknown (ibid., paras. 24-30). The incident intimidated other civilians to the extent that no others attempted to leave Masaken Hanano until the Syrian army recaptured the district on 26 November.

68. Throughout the duration of the siege, armed groups established offices in civilian homes and complexes, and regularly appropriated residences left abandoned by civilians who either been able to flee eastern Aleppo or who had passed away.

VI. Western Aleppo city

Rocket and mortar attacks

69. Approximately 1.5 million residents, including internally displaced persons, inhabited the densely populated districts of Government-held western Aleppo city throughout the period under review. Shortly after the siege was laid to east Aleppo in late July, anti-Government armed groups launched a series of counter offensives to break the siege from the south, in and around the military colleges of Ramousch district, with limited success. By early September, pro-Government

forces had renewed and secured the siege. Faced with a protracted humanitarian catastrophe, confined armed groups began a concerted campaign of shelling western Aleppo neighbourhoods over the next three months. Attacks were predominantly characterized by indiscriminate, indirect artillery fire into dense urban terrain, often with no apparent legitimate military objective, the effect of which terrorized the inhabitants of western Aleppo city.

70. The weaponry used by armed groups to effect stand-off attacks against western Aleppo city most commonly comprised indirect fire artillery systems, including multiple-barrel rocket launchers and improvised and craft-produced rockets. Improvised and craft-produced mortars ("hell cannons") were also used. Armed groups had access to a limited number of direct-fire weapons, including recoilless guns, cannons, and a limited number of anti-tank guided weapons. Given the lack of a clear line of sight from the besieged pocket to potential target areas in western Aleppo, direct-fire weapons were typically employed only from a shorter range in and around the frontlines.

71. By early August, ongoing clashes for territorial control between armed groups and government troops over the 1070 Apartment Project, located on the southern edge of Al-Hamadaniyah district, intensified greatly. On 10 August, at approximately 10.30 a.m., in the third neighbourhood of Al-Hamadaniyah, next to the Ibn al-Bitar high school, unidentified munitions launched by armed groups struck a microbus transporting students to Aleppo University; 13 of 24 passengers were immediately killed, including the bus driver and his assistant, while 35 civilians were wounded, including passengers, shoppers and street vendors. At least six market stalls lining the street were damaged or completely burned. Al-Hamadaniyah district houses Al-Assad Military Academy, the Military Officers' Housing and military vehicle shelters, located approximately 1.5 kilometres from Ibn al-Bitar high school. No military facilities were struck during the attack. The distance between Ibn al-Bitar high school, where the microbus was struck, and military facilities in al-Hamadaniyah suggests that armed groups battling in the vicinity of the 1070 Apartment Project fired an unguided rocket, amounting to the war crime of indiscriminate attacks in a civilian populated area (ibid., paras. 23-25).

72. On 30 September, in Al-Midan district, at approximately midday, unidentified munition, believed to be an unguided rocket fired from Bustan al-Pasha, struck a small supermarket next to al-Adra Church of Virgin Mary in the densely populated Villa neighbourhood, known as one of the most bustling commercial centres in Al-Midan. Two boys and one woman were killed as a result of shrapnel injuries, and the mother of the boys slightly injured. The distance between Bustan al-Pasha and Al-Midan district is approximately 1.5 kilometres. At the time of the attack, there was no military presence in or around Villa neighbourhood, which is home to a predominantly neutral Armenian minority population. The nature of the attack and lack of military presence suggests that armed groups committed the war crime of directing attacks against a civilian population (ibid., para. 26).

73. On 6 October, several unidentified munitions believed to be hell cannon projectiles were fired from the Bustan al-Qasr area shortly after midday prayers, striking a public market of shops and restaurants on Iskenderun street, in Al-Jamiliyah neighbourhood of Al-Midan district. The distance between Bustan al-Qasr and Al-Midan districts is approximately five kilometres. The attack killed more than 12 civilians, including a woman and a child. More than 70 other civilians were wounded, and numerous shops destroyed. Hell cannons are relatively inaccurate and imprecise weapons, which fire unguided gas canisters with an approximately 40-metre blast radius. While the headquarters of Air Defence Intelligence of the Government is located just north of Al-Midan district, in neighbouring Bustan al-Pasha, the use of hell cannons at a distance of five kilometres from a besieged pocket amounts to the war crime of indiscriminate attacks in a civilian populated area (ibid., paras. 20-21).

74. As in eastern Aleppo city, numerous educational institutions and students in western Aleppo city were also afflicted by indiscriminate attacks during the period under review. On 2 November, armed groups fired indirect mortar projectiles towards the Aleppo University Faculty

of Humanities in Al-Furqan district, killing at least two female students. On 20 November, shortly before 11 a.m., armed group fighters situated in Bustan al-Qasr launched unguided rockets towards Al-Furqan district, striking the backyard and a building of Furqan elementary school, killing at least seven children and injuring a girl. On 28 November, armed groups struck the Maamoun school and an adjacent school in Al-Jamiliyah. At least one 18-year-old student suffered shrapnel injuries to his colon, liver and lungs, and died as a result.

VII. Sheikh Maqsoud district

Rocket and mortar attacks

75. Soon after the uprising in the Syrian Arab Republic, in 2012 government forces withdrew from predominantly Kurdish inhabited areas in the north of the country to focus on the ensuing conflict. Sheikh Maqsoud, a hilltop district at the northern edge of Aleppo city, has since been under the control of the Kurdish People's Protection Units (YPG). By April 2016, anti-Government armed groups from the north, east and west surrounded the majority Kurdish district, which was subsequently subjected to a series of attacks. As pro-Government forces vied for control and laid siege to eastern Aleppo city, Sheikh Maqsoud witnessed a barrage of intentional attacks by both groups based in western Aleppo countryside and those affiliated with Fatah Halab (see para. 62 above) in eastern Aleppo city. Apart from rocket attacks directed at civilian-inhabited areas, sniper fire with precision rifles from armed group positions in eastern Aleppo city caused numerous casualties. The overall situation in the Kurdish-held enclave remains precarious; there are serious shortage of water and electricity, and most of the population subsists on generators and wells.

76. On 9 August, a Fatah Halab operations room commander, Major Yasser Abd ar-Rahim, delivered a statement vowing that the coalition of armed groups would take "revenge" on the Kurds in Sheikh Maqsoud, specifying that they would "not find a place to bury their dead in Aleppo". Major Abd ar-Rahim accused the YPG of killing armed group fighters and of collaborating with pro-Government forces over the summer. While attacks against Sheikh Maqsoud decreased during the period under review (compared with earlier in the year, due to the siege), it was against this backdrop that armed groups intentionally attacked civilian-inhabited neighbourhoods of the Kurdish enclave, killing and maiming dozens of civilians. These acts constitute the war crime of directing attacks against a civilian population (see annex I, para. 20).

77. On 7 September, shortly before noon, a male doctor was on his way home when a barrage of seven unguided rockets struck Sheikh Maqsoud. Two of the rockets hit a residential street, while the other five damaged nearby buildings. YPG military sources later informed the doctor that the rockets had most likely travelled a long distance, originating from armed group-held Kafr Hamra, in the Aleppo countryside, approximately seven kilometres from the affected neighbourhood. A second male doctor, the only paediatric surgeon in Sheikh Maqsoud at the time, suffered multiple shrapnel injuries to the chest and subsequently died en route to a neighbouring Government-held area for treatment. Three other men suffered moderate, non-life threatening wounds. The area attacked, close to both Yasin Yasin school and the western market, was residential in nature, and situated at least one kilometre away from the nearest frontlines, with no YPG military presence.

78. On 8 October, at approximately 4 a.m., an unguided rocket struck the apartment of a family of six in a complex near a vegetable market on street number 10 in western Sheikh Maqsoud, and landed in one of its rooms. The rocket is believed to have originated from either the Bustan al-Pasha or Huluk areas of eastern Aleppo city. A boy and his aunt were immediately killed by shrapnel injuries to the head, along with the boy's sister. The mother and grandmother were also

severely wounded, though both have since recovered. Local authorities told one witness that the rockets employed were one metre in length. There was no military position in the neighbourhood.

VIII. Aleppo countryside

Attack on humanitarian convoy

79. On 19 September, in Orum al-Kubra (western Aleppo governorate), a United Nations/SARC convoy was attacked by air, killing at least 14 civilian aid workers and injuring at least 15 others. The attack also destroyed 17 trucks and, with them, food, medicine, children's clothes and other supplies destined for families in western Aleppo governorate controlled by armed groups, including Atarib and Ibbeen. The attack began shortly after the General Command of the Syrian Armed Forces issued a statement declaring an end to the ceasefire in place since 12 September. After the attack, the United Nations announced a suspension of all aid convoys in the Syrian Arab Republic.[5]

80. The 31-truck convoy had travelled from Government-controlled areas with the knowledge and permission of government authorities, and arrived in the early afternoon at the SARC warehouse in Orum al-Kubra, a town controlled by armed groups. The warehouse was located on the road between Atarib to Aleppo, approximately one kilometre from Orum al-Kubra. As there was not enough space for all trucks in the warehouse, some parked along the road. Several witnesses recalled that armed group fighters used the road for transportation, although none were aware this had been the case on the day of the attack. All witnesses denied that armed group vehicles had accompanied the convoy.

81. Upon arrival at the warehouse, at approximately 1.30 p.m., 42 SARC staff and other workers began unloading goods from the trucks and sorting them for distribution. Survivors of the attack recalled seeing aircraft in the area, but continued working because they assumed that the aircraft were monitoring the ceasefire. The Russian Federation later released video footage showing a Russian drone monitoring the convoy.

82. At sunset, at approximately 6.30 p.m., aid workers were warned via walkie-talkie (a means commonly used to transmit an alert of imminent attack) of the presence of aircraft in the area. The workers subsequently learned that helicopters were heading towards the warehouse. The aerial attack began shortly afterwards, at approximately 7.10 p.m.

83. Accounts from survivors and others present in the vicinity consistently described the attack as comprising three stages. First, helicopters dropped barrel bombs, which struck the warehouse and a family home nearby. Immediately thereafter, people rushed to the scene to assist the wounded, but were forced to retreat and seek cover when the helicopters returned and dropped a second round of barrel bombs (see annex I, para. 49). Subsequently, planes, described by several witnesses as Sukhoi jets, carried out attacks, killing several aid workers. Lastly, the aircraft fired machine guns at survivors.

84. Survivors described scenes of panic as workers were killed and maimed in the dark. The attack lasted at least 30 minutes. Those who could escape fled to nearby locations, although almost nobody was left unscathed. After the attack, rescuers rushed to the scene to find several bodies; some were charred beyond recognition, while others were missing limbs. The recovery of bodies continued throughout the following day.

[5] On 17 December 2016, a board of inquiry appointed by the Secretary-General to investigate the attack on the humanitarian convoy published a summary of its findings, available at https://dpa-ps.atavist.com/summary-of-un-headquarters-board-of-inquiry-report.

85. The claim made by victims that the attack was the result of an air strike is corroborated by a site assessment, including analysis of remnants of aerial bombs and rockets documented at the site, as well as satellite imagery showing impact consistent with the use of air-delivered munitions.[6]

86. The munitions employed were particularly appropriate for attacking unarmoured vehicles and individuals. Photographs provided by witnesses indicate that several S-5CB unguided air-to-surface anti-personnel rockets produced in the Soviet Union, at least one RBK-500 series air-delivered cluster bomb carrying hundreds of sub-munitions, and at least two OFAB 250-270 unguided aerial bombs were used. The Syrian air force possesses all of these weapons in its arsenal. S-5CB rockets, loaded with flechettes, are intended for use against soft-skinned vehicles and personnel. Use of sub-munitions against a wide area target such as a convoy is also consistent with a planned attack targeting dispersed vehicles. Improvised air-delivered munitions and OFAB series munitions are suitable for targeting individuals, unarmoured vehicles and buildings. It appears that once aircraft had exhausted their weapon stores they continued to press the attack with guns, thus prolonging the attack and maximising civilian harm.

87. Early warning reports, satellite imagery, witness testimony, forensic evidence gathered at the site and data provided by Member States are consistent with the use of air-delivered munitions and implicate Syrian forces in the attack. Syrian Su-24M strike aircraft and at least one and possibly two Syrian Mi-8 attack helicopters were operating in and around Orum al-Kubra at the time of the attack. No coalition aircraft employed weapons within 50 kilometres of the attack, and no Russian strike aircraft were nearby during the attack.

88. The types of munitions used, the breadth of the area targeted and the duration of the attack strongly suggest that the attack was meticulously planned and ruthlessly carried out by the Syrian air force to purposefully hinder the delivery of humanitarian aid and target aid workers, constituting the war crimes of deliberately attacking humanitarian relief personnel, denial of humanitarian aid and targeting civilians (see annex I, paras. 34-35).

IX. Recapture of eastern Aleppo

89. 27 November marked the beginning of territorial gains by pro-Government forces in eastern Aleppo. Upon taking control of northern districts, pro-Government forces separated women from men, with the latter subjected to screenings and those identified as fighters transferred to detention centres. Syrian forces conscripted many of the remaining men (see annex I, para. 52), and transferred some 5,000 people to a camp in Jibreen. People were again screened in Jibreen, and at least one man was subsequently arrested. His whereabouts remains unknown (ibid., para. 28-30).

90. Reports of violations continued to emerge in early December as internally displaced persons crossed into Government-controlled areas. Humanitarian workers and medical and civil defence staff reported a greater risk of arrest for being perceived as a supporter of an armed group. In early December, pro-Government forces arrested three humanitarian workers and several Jabal Bedro residents perceived to be supporters of armed groups. On 13 December, a doctor and his wife were arbitrarily arrested at a checkpoint. Reports of forced conscription continued to emerge; the single largest recruitment took place on 11

[6] See UNOSAT satellite imagery analysis uploaded on the webpage of the Commission at www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx.

December, when a group of approximately 200 men aged between 19 and 25 were forcibly conscripted after crossing with their families into western Aleppo.

91. From late November until evacuations were completed in December, some pro-Government forces carried out executions in reprisal. These included cases of Syrian soldiers killing their own relatives who were supporters of armed groups. Pro-Government forces also executed an armed group commander's wife and daughter while they attempted to cross into western Aleppo. In December, relatives of fighters of the Free Syrian Army, including women and elderly, were reportedly killed in Bustan al-Qasr.

92. During the mid-December evacuations, pro-Government forces stopped and handcuffed three armed group fighters rendered hors de combat. A fourth fighter fired shots as they tried to apprehend him, prompting the soldiers to shoot all four men. During the evacuations, some pro-Government forces again conscripted men and boys as young as 16 years (ibid., para. 53), and pillaged evacuee property, including money, jewellery, laptops and mobile phones (ibid., para. 31).

93. After the Government reached an evacuation agreement with armed groups in mid-December, residents of eastern Aleppo were transported from the city in government buses and private vehicles to Idlib, while others fled to western Aleppo. None had the option to remain in their home. As part of the agreement, more than 1,000 people were evacuated from Foah and Kafraya and went to Aleppo, Tartous, Homs and Latakia governorates. As warring parties agreed to the evacuation of eastern Aleppo for strategic reasons – and not for the security of civilians or imperative military necessity, which permit the displacement of thousands - the Aleppo evacuation agreement amounts to the war crime of forced displacement (ibid., paras. 50-51).

X. Conclusions

94. **Parties to the battle for Aleppo committed serious violations of international human rights law and international humanitarian law amounting to war crimes. As pro-Government forces and armed groups fought for control of eastern Aleppo city, civilians caught in the fighting were increasingly left vulnerable to repeated violations by all sides.**

95. **Resorting to a concerted aerial campaign coupled with ground forces that encircled eastern Aleppo city, government forces and their allies employed brutal tactics to force the armed groups to surrender. The siege simultaneously deprived civilians of freedom of movement and prevented basic commodities, including food and medical supplies, from entering the city. Widely used throughout the conflict, the use of this "surrender or starve" tactic by the pro-Government forces has proven disastrous for civilians but successful for overtaking opposition-held territory.**

96. **While the deprivation of supplies might have ultimately forced armed groups to surrender, the achievement of this result was accelerated by daily Syrian and Russian air strikes, which claimed hundreds of lives and destroyed vital civilian infrastructure. Chief among these were the bombardments that destroyed or otherwise rendered all hospitals in eastern Aleppo out of service by December. In none of the incidents investigated by the Commission were military targets identified as being present in or around the vicinity of a hospital, nor were warnings given prior to any given attack as required by international humanitarian law. Furthermore, the fact that the same hospitals were repeatedly bombarded within two specific time frames – late September to mid-October and mid-November 2016 – strongly suggests that pro-Government forces committed the war crimes of intentionally targeting protected objects, medical personnel and transport.**

97. In one of the most egregious attacks conducted during the period under review, a humanitarian convoy was hit by an air strike, which killed 15 aid workers and destroyed much-needed aid supplies. The means and methods employed and the circumstances in which the attack was carried out indicate that Syrian forces sought to deliberately obstruct the delivery of humanitarian aid. Under international humanitarian law, aid workers enjoy protection and may not be made the object of attack. By using air-delivered munition with the knowledge that humanitarian workers were operating in the location, Syrian forces committed the war crimes of deliberately attacking humanitarian relief personnel, denial of humanitarian aid, and attacking civilians.

98. An alarming number of allegations of the use of chlorine were reported during the siege of eastern Aleppo. In at least two incidents, chlorine bombs were airdropped by Syrian forces, resulting in civilian casualties, many of them children. The use of chlorine, regardless of the presence of a valid military objective, is prohibited by customary international humanitarian law as well as by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, to which the Syrian Arab Republic is a party. The continued use of chlorine by Syrian forces evinces a blatant disregard for international legal obligations, and also amounts to the war crime of indiscriminate attacks against a civilian population.

99. Syrian and/or Russian air forces pervasively used cluster munitions, which killed and injured civilians. Given the large number of sub-munitions that each cluster bomb releases, their use in such a densely populated area as eastern Aleppo city amounts to the use of an inherently indiscriminate weapon, constituting the war crime of indiscriminate attacks in a civilian populated area.

100. Shortly after government forces laid siege to eastern Aleppo city, armed groups in western Aleppo countryside and eastern Aleppo city bombed Sheikh Maqsoud with the expressed intent of taking revenge on its majority Kurdish population. A series of intentional attacks resulted in the death and injury of civilians, amounting to the war crime of deliberately directing attacks against a civilian population.

101. Throughout the siege of eastern Aleppo, armed groups continuously shelled western Aleppo using mostly unguided and imprecise weaponry, such as improvised rockets and mortars. One of the most commonly used weapons were so-called "hell canons". The nature of the weapons used and the absence of a military presence in the majority of cases reviewed terrorized residents of western Aleppo in violation of the international humanitarian law principle of distinction. These attacks therefore amount to the war crime of indiscriminate attacks against a civilian population.

102. Some armed groups also committed the war crimes of withholding the distribution of humanitarian aid from the besieged population under their control, and actively denied civilian freedom of movement, used civilians as human shields, conducted arbitrary arrests and used civilian buildings for military purposes.

103. The recapture of eastern Aleppo was characterized by reprisals, the most serious of which were executions by members of pro-Government forces of hors de combat armed groups fighters and the murder of their civilian family members. Arbitrary arrests of persons suspected of supporting armed groups, including doctors and humanitarian workers, were made, and men and boys were subjected to forced conscription.

104. After the recapture of eastern Aleppo, the Government and armed groups reached an agreement that led to the evacuation of the remaining population. Under the terms of the agreement, which follows previous similar agreements, including

those applied to Darayya and Moadamiyah in August 2016, civilians had no option to remain. Many were permitted to move to western Aleppo, while others were transported to Idlib, where they live without adequate living conditions and in fear of future attacks. Such agreements amount to the war crime of forced displacement of the civilian population.

XI. Recommendations

105. On the basis of its findings, the Commission makes the recommendations below.

106. The Commission recommends that all warring parties:

(a) Comply with their obligations under international human rights and international humanitarian law, including refraining from all indiscriminate and disproportionate attacks;

(b) End all sieges and related strategies, including starvation and denial of access to humanitarian aid, including food, water and medicine, that primarily affect civilians;

(c) Refrain from future evacuation agreements resulting in the forcible displacement of civilian populations for military gains;

(d) Undertake investigations into the conduct of their forces and make their findings public.

107. The Commission recommends that the Government of the Syrian Arab Republic:

(a) Provide evacuees from eastern Aleppo now living in Government-controlled territory with adequate and safe living conditions;

(b) Allow those choosing to return to their homes in eastern Aleppo to do so in safety, retaining all property rights and without fear of reprisals or discrimination;

(c) Ensure that besieged communities have access to humanitarian aid, in compliance with Security Council resolutions 2165 (2014), 2191 (2014), 2258 (2015) and 2328 (2016);

(d) End all attacks against aid workers and humanitarian facilities, including medical personnel, hospitals and transport.

108. The Commission recommends that armed groups:

(a) Repudiate extreme elements and apply effective leverage for compliance with international law;

(b) Allow freedom of movement to members of communities living in territories under their control, including by refraining from using civilians as human shields;

(c) Cease indiscriminate shelling of civilian-inhabited areas.

109. The Commission recommends that the international community:

(a) Promote efforts to ensure accountability, including by actively supporting the establishment of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for

the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, in accordance with General Assembly resolution 71/248;

(b) Call upon the Independent Mechanism, once operational, to collect, as a matter of priority, further evidence and information on the crimes documented by the Commission in the present report;

(c) Curb the supply of weapons to warring parties and their proliferation, particularly cluster munitions and incendiary weapons, which are indiscriminate when used in civilian-inhabited areas and pose a threat to civilians for years after the cessation of hostilities;

(d) Urges all Member States to reinforce the international legal framework on civilian protection, including by ratifying relevant treaties, such as the Convention on Cluster Munitions and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects;

(e) Support the continuation of political processes and negotiations aimed at ending the Syrian conflict, particularly the efforts of the Special Envoy of the Secretary-General for Syria to pursue political talks in accordance with the road map stipulated by the Security Council in its resolution 2254 (2015).

Annex I

Applicable law

A. Background

1. During the period under review, the Commission notes that the intensity and duration of the conflict continued to meet the legal threshold for a non-international armed conflict.[1] With this determination, the Commission applied international humanitarian law, including article 3 common to the four Geneva Conventions of 12 August 1949 ("Common Article 3"), in its assessment of the actions of the warring parties during hostilities in Aleppo between 21 July 2016 and 22 December 2016.

B. Legal regimes in effect

2. The applicability of international humanitarian law (IHL) does not replace existing obligations under international human rights law (IHRL). Rather both regimes remain in force and are generally considered as complementary and mutually reinforcing. Where both IHL and IHRL apply, and can be applied consistently, parties to a conflict were obligated to do so. In situations where IHL and IHRL were both applicable, the commission deferred to the application of IHL under the principle of *lex specialis*.[2] The specific applicability of each regime is briefly reviewed below.

C. International human rights law

3. At all times relevant to this report the Syrian Arab Republic was party to the major United Nations human rights treaties and a number of optional protocols.[3] The Syrian

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[1] See, e.g., ICTY, *The Prosecutor v. Dusko Tadic*, Judgment, IT-94-1-T, 7 May 1997, at paras. 561-568; see also ICTY, *The Prosecutor v. Fatmir Limaj*, Judgment, IT-03-66-T, 30 November 2005, para. 84.

[2] See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 [hereinafter "ICJ Nuclear Weapons"]. The International Court of Justice ruled that IHL is *lex specialis* vis-à-vis IHRL during armed conflicts. The parties must therefore abide by the legal regime which has a more specific provision on point. The analysis is fact specific and therefore each regime may apply, exclusive of the other, in specific circumstances. The Human Rights Committee generally concurs with this view as set out in the General Comment No. 31 to the ICCPR. "The Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive."

[3] The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights were ratified by the Syrian Arab Republic in 1969, the same year it ratified the Convention on the Elimination of All Forms of Racial Discrimination. The Syrian Arab Republic is also party to the Convention on the Elimination of Discrimination against Women which it ratified in 2003, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment in 2004 and the Convention on the Rights of Child in 1993. The Syrian Arab Republic ratified the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict in 2003. The Syrian Arab Republic has not ratified the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

Government did not declare a state of emergency nor otherwise seek to derogate from any of the aforementioned obligations which consequently remained in effect throughout the battle for control over Aleppo city, irrespective of the applicability of other legal regimes.[4]

4. All branches of the Syrian Government were therefore bound to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction. The obligation included the right to afford an effective remedy to those whose rights were violated including the provision of reparations and to investigate and bring to justice perpetrators of particular violations.[5] The Syrian Arab Republic was also bound by relevant rules of IHRL which form a part of customary international law, such as the absolute prohibition against torture.

5. Non-state actors and IHRL: Non-state actors ("armed groups") cannot formally become parties to international human rights treaties. Armed groups were nevertheless obligated to respect the fundamental human rights of persons forming customary international law, in eastern Aleppo city, where such actors exercised de facto control.[6] The Commission therefore examined allegations of human rights violations committed by the Syrian Government as well as abuses of customary international human rights norms perpetrated by armed groups operating in eastern Aleppo city.

D. International humanitarian law

6. Throughout the reporting period, IHL remained binding on all warring parties.[7] Its applicability had been triggered when hostilities met the threshold criteria of "armed conflict."[8] IHL comprises the four Geneva Conventions of 12 August 1949 as well as its Protocols I and II and an array of other instruments and customary principles that protect

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[4] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 178, paras. 105-106, "[t]he protection offered by human rights conventions does not cease in case of armed conflict." See also *ICJ Nuclear Weapons*, statements concerning IHL as *lex specialis*, supra note 2, at para. 25.

[5] See Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on State Parties to the Covenant (2004), at paras. 15-19. In this General Comment, the Human Rights Committee considered that the duty to bring perpetrators to justice attaches in particular to violations that are criminal under domestic or international law, torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance; see also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in December 2005, and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (which were recognised in a consensus resolution of the Commission on Human Rights in 2005).

[6] For a more expansive view of the application of IHRL, see Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006). To similar effect, see Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para. 188, available at http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf.

[7] "[I]t is well settled that all parties to an armed conflict, whether States or non-State actors, are bound by international humanitarian law, even though only States may become parties to international treaties." See *Prosecutor v. Sam Hinga Norman*, Special Court for Sierra Leone, case SCSL-2004-14-AR72(E) (31 May 2004), at para. 22. Common Article 3 of the Geneva Conventions itself states that "each party . . . shall be bound".

[8] The Commission first determined the existence of a non-international armed conflict in the Syrian Arab Republic beginning in February 2012. See, e.g., A/HRC/21/50.

civilians and other categories of persons from deliberate targeting and seek to limit the effects of armed conflict on the most vulnerable.[9]

7. The Syrian Arab Republic is a party to the Geneva Conventions and its Protocol I, as well as to several other IHL instruments concerning weaponry and mercenaries.[10] The Syrian Arab Republic has not, however, ratified Protocol II to the Geneva Conventions which is specifically applicable during non-international armed conflicts. A number of provisions of customary IHL nevertheless apply to non-international armed conflict and must be respected when the threshold of non-international armed conflict is met. The Commission took note that a non-international armed conflict developed in the Syrian Arab Republic during February 2012 which triggered the applicability of Common Article 3 as well as customary law relevant to non-international armed conflict.[11]

8. As the Security Council underlined in Resolution 1325 (2011), it is essential for all States to apply fully the relevant norms of IHL and IHRL to women and girls, and to take special measures to protect women and girls from gender-based violence during armed conflict.[12]

E. Violations

The right to life

9. Various treaties, resolutions, conventions, and declarations adopted by United Nations bodies contain provisions relating to specific types of violations of the right to life. Under IHRL, the right to life is most prominently recognised in article 3 of the Universal Declaration of Human Rights, noting that "[e]veryone has the right to life, liberty and security of person." Article 6 of the International Covenant on Civil and Political Rights ("ICCPR") also recognises the inherent right of every person to life, noting that the right "shall be protected by law" and that "no one shall be arbitrarily deprived of life." The right to life of persons under the age of 18 and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically recognized in article 6 of the Convention on the Rights of the Child.

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[9] One repository of the principles of customary IHL can be accessed in *Customary International Humanitarian Law* (3 vols.), by Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, (Cambridge, Cambridge University Press, 2005) (ICRC Study).

[10] The Syrian Arab Republic is a party to the following treaties: The Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare (1925); the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (1929); the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its Protocol(1954); the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989).

[11] See supra note 8.

[12] See Security Council resolution 1820 (2008).

10. Moreover, the ICCPR provides that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify derogation from the right to life and security of person.[13]

The right to food

11. With respect to right to food, the legal obligations of states are set out in the International Covenant on Economic, Social and Cultural Rights ("ICESCR").[14] The Committee on Economic, Social and Cultural Rights in General Comment No. 12 also defined the obligations that States parties have to fulfil in order to implement the right to adequate food at the national level. The obligation to respect existing access to adequate food requires states not to take any measures that result in preventing such access; the obligation to protect requires measures by the state to ensure that enterprises or individuals do not deprive individuals of their access to adequate food; the obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security; and whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.

The right to water

12. The human right to water is explicitly and widely recognised through several international human rights treaties, declarations, and numerous other standards.[15] As noted in General Comment No. 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), "[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements." One-hundred and twenty-two UN member states acknowledged the right to water in GA resolution A/64/292.[16] Intentionally attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of a besieged civilian population, including water stations, is prohibited under IHL.[17]

Education

13. As defined by General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights, "education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities."

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[13] International Covenant on Civil and Political Rights, United Nations, *Treaty Series*, vol. 999, p. 171 [hereinafter "ICCPR"], at art. 4, para. 2.

[14] International Covenant on Economic, Social and Cultural Rights, United Nations, *Treaty Series*, vol. 993, p. 3 [hereinafter "ICESCR"], at art. 2.

[15] See, e.g., Human Rights Council resolution 18/1 on the human right to safe drinking water and sanitation.

[16] General Assembly resolution 64/292 on the human right to water and sanitation.

[17] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules [hereinafter "ICRC Rule"], at Rule 54.

14. The legal obligations of Governments concerning the right to education consist of: (i) the duties found in article 2.1 of the ICESCR; and (ii) the more specific obligations to recognise, respect, protect and fulfil this and other rights. The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.

15. Moreover, under IHL, schools may only be the object of attack by warring parties when used for military purposes, and such attacks require prior warning when the school is located in a densely populated civilian area.[18]

Unlawful killing

(a) Arbitrary deprivation of life

16. IHRL strictly prohibits the arbitrary taking of life, a restriction that bars state actors from killing a person outside a legitimate and legal basis for doing so. Outside of situations of armed conflict, those legitimate bases are twofold. First, when a fully-fledged judicial process in line with international standards has been followed, or second, in the most narrow of circumstances, where a person's life is under imminent threat.

17. Moreover, a state-sponsored deprivation of life will be arbitrary in the legal sense unless it is both necessary and proportionate. Therefore, when a state actor employs lethal force it must be in order to protect life (i.e., it must be proportionate) and there must also be no other means available, such as capture or incapacitation, to curtail that threat to life (i.e., it must be necessary). Only under these limited circumstances could the resort to lethal force by the State be deemed legal.

18. In situations of armed conflict, whether the taking of life is considered arbitrary is determined by the application of the lex specialis, namely IHL.[19] Any deprivation of life therefore deemed unlawful under IHL and does not meet the criteria set out above also constitutes a violation of the right to life.

(b) Murder as a war crime

19. In specific circumstances, killing another person during an armed conflict constitutes the war crime of murder. The war crime of murder is a recognised offense under customary international law and during a non-international armed conflict has been codified in the Rome Statute.[20] Murder is committed upon the intentional killing of a protected person in the context of an armed conflict when the perpetrator is aware of the circumstances of the victim and the conflict itself.

Attacks on protected persons and objects; indiscriminate attacks

20. IHL prohibits the intentional targeting of civilians in both international and non-international armed conflicts. Parties to the conflict in Aleppo city had an obligation to distinguish at all times between those taking part in hostilities and the civilian population, and to only direct attacks against military objectives. Referred to as the "principle of distinction", this principle has been recognised as "intransgressible" under customary international law.[21]

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[18] Ibid. at Rule 20.

[19] See *ICJ Nuclear Weapons*, supra note 2, at para. 79.

[20] General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, at art. 8 (2) (c) (i)-1.

[21] *ICJ Nuclear Weapons*, supra note 2, at para. 25.

21. Attacks on places where both civilians and fighters may be found are prohibited if they are not directed at a specific military objective, or if they use methods or means of combat which cannot be directed at a specific military objective.[22] It is prohibited to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, and/or damage to civilian objects which would be excessive in relation to the anticipated concrete and direct military advantage.[23]

22. Customary IHL establishes that all "parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks."[24] Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.[25] Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.[26]

23. Customary IHL also incorporates specific protections for places of worship, including mosques. It is prohibited to commit an act of hostility directed against places of worship which constitute the cultural or spiritual heritage of peoples.[27]

Arbitrary arrest and unlawful detention

24. Article 9 of the ICCPR prohibits arbitrary arrest or detention of individuals, providing that that "no one shall be deprived of liberty except on such grounds in accordance with such procedures as are established by law." Persons arrested are to be informed at the time of arrest of the reasons for the arrest and promptly informed of any charges.[28] Anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other officer authorised by law to exercise judicial power and is entitled to trial within a reasonable period or release.[29] Persons have a right to take proceedings before a court for the purposes of reviewing the lawfulness of detention and to be released if the detention is unlawful.[30] The term "arbitrary" must be considered in terms of appropriateness, proportionality, and reasonableness.[31] Lawfulness of detention is to be considered as both lawfulness under domestic law and lawfulness under international law.[32]

25. The Commission notes the conditions of detention provided for in the Syrian Arab Republic's domestic law. Article 4 of the State of Emergency Act authorises the Military Governor to impose, through oral or written orders, "restrictions on the rights of people to the freedom of assembly, residence, transport, and movement, and to arrest suspected people or those threatening public security on a temporary basis, and to authorize

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[22] ICRC, Rule 12.
[23] Ibid. at Rule 14.
[24] Ibid. at Rule 22.
[25] Ibid. at Rule 23.
[26] Ibid. at Rule 24.
[27] Ibid. at Rule 38.
[28] ICCPR, art. 9(2).
[29] Ibid., art. 9(3).
[30] The ICCPR also provides for a right of compensation for unlawful arrest or detention.
[31] *A v Australia*, Human Rights Committee, Communication No. 560/1993, CCPR/C/59/D/560/1993, para. 9.2. In considering unlawful remand, the Committee has also highlighted that factors of inappropriateness, injustice and lack of predictability that may render arbitrary an otherwise lawful detention, see *Van Alphen v The Netherlands*, Human Rights Committee, Communication No.305/1988, CCPR/C/39/D/305/1988.
[32] See, e.g., *A v Australia*, Human Rights Committee, Communication No. 560/1993, CCPR/C/59/D/560/1993, at para 9.5.

investigations of persons and places at any time, and to allow any person to perform any task."[32]

26. The State of Emergency Act also provides for the detention of suspects for "crimes committed against State security and public order" and "crimes committed against public authorities".[33] The Commission observes that these crimes do not appear to be further defined in the Syrian Arab Republic's domestic laws. The State of Emergency Act also permits the security forces to hold suspects in preventive detention without judicial oversight for indefinite periods.

27. The Commission observes that in April 2011, the Syrian Arab Republic's Code of Criminal Procedure – which previously required suspects to be brought before a judicial authority within 24 hours of arrest or else be released[35] – was amended to allow suspects to be held for up to seven days, pending investigation and the interrogation of suspects for certain crimes. This period is renewable up to a maximum of 60 days.[36]

Enforced disappearance

28. While the Syrian Arab Republic is not party to the specialised convention concerning enforced disappearances,[37] it is a party to the ICCPR which also prohibits the practice of enforced disappearance.[38] Such action violates a person's right to recognition as a person before the law,[39] to liberty and security and freedom from arbitrary detention, including the right to be brought promptly before a judge or other official for review of the lawfulness of detention. Disappearance may also be associated with torture and other forms of cruel, inhuman or degrading treatment and extrajudicial execution, in violation of the right to life, prohibition on torture and other forms of cruel, inhuman or degrading treatment.[40] enforced disappearances may also lead to violations of the right to life.[41]

29. Customary IHL also prohibits arbitrary deprivation of liberty[42] and require parties to the conflict to keep a register of persons deprived of their liberty,[43] respect detainees' family life, to permit detainees to receive visitors, especially near relatives to the degree practicable and allow correspondence between detainees and their families.

30. Parties to a conflict must take all feasible measure to account for persons reported missing as a result of the conflict and efforts must be made to provide family members with any information the Party has on their fate. The practice of enforced disappearance also may be a gateway to other violations such as torture, murder or extra judicial executions.

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[32] While the state of emergency was lifted on 21 April 2011, the Government did not abolish it, and it remains in force under Syrian domestic law.

[33] State of Emergency Act, art. 4.

[35] Code of Criminal Procedure, Law No. 112 of 1950 as amended, arts. 104 (1) and (2).

[36] Legislative Decree No. 55/2011, amending article 17 of the Code of Criminal Procedure.

[37] International Convention on the Protection of all Persons from Enforced Disappearance, 2006.

[38] See General Comment No. 31, supra note 9, at para. 18.

[39] ICCPR, at art. 16.

[40] The Human Rights Committee has recognised that safeguards against torture include having provisions against incommunicado detention, granting detainees suitable access to persons such as doctors, lawyers and family members, ensuring detainees are held in places that are officially recognised as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. See Human Rights Committee, General Comment No. 20 (1992) on art. 7 of the ICCPR, at para. 11.

[41] ICCPR, at art. 6.

[42] ICRC Rule 99.

[43] ICRC Rule 123.

The combined effect of particular IHL obligations leads to the conclusion that the practice of disappearance is prohibited by customary IHL. Integral to the finding of a crime of "enforced disappearance" is a refusal to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.[44]

Pillaging

31. By definition pillage (or plunder) is theft within the context of, and in connection with, an armed conflict. The prohibition of pillage is a long-standing rule of customary and treaty-based international law. The pillaging of personal belongings of persons deprived of their liberty amounts to a war crime.[45]

Destruction of personal property

32. International human rights law protects an individual's home from interference by the State. Article 17 of the ICCPR prohibits arbitrary or unlawful interference with a person's home or correspondence. The Human Rights Committee has interpreted this provision to mean that no interference can take place except in cases envisaged by the law, and that law must comport with the objectives of the ICCPR.[46] Article 11 of the ICESCR commits States Parties to providing everyone "an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions."

Sieges

33. While the laying of sieges with the aim of compelling surrender does not, in and of itself, constitute a violation under IHL, the use of the military tactic must comport with other IHL rules, including allowing for vital foodstuffs and other essential supplies to be delivered to the besieged civilian population.

34. The delivery of vital foodstuffs and other essential supplies to the besieged civilian population must be granted. Parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.[47] The use of starvation of the civilian population as a method of warfare is prohibited.[48]

35. Moreover, as the freedom of movement of humanitarian relief personnel is essential to the exercise of their functions, warring parties must ensure the freedom of movement of authorised humanitarian relief personnel unless imperative military necessity requires their movements be temporarily restricted.[49] Civilian humanitarian relief personnel must be respected and protected and are specifically protected against attack by the principle of

[44] International Criminal Court (ICC), *Elements of Crimes*, 2011, at art. 7(1)(i).

[45] ICRC Rule 122. See also the *Jelisić* case before the International Criminal Tribunal for the former Yugoslavia, where the accused was charged under art. 3(e) of the Tribunal's Statute with the plunder of private property. The defendant pled guilty to the offence of having stolen money, watches, jewellery, and other valuables from detainees upon their arrival at Luka camp in Bosnia and Herzegovina. ICTY, *Jelisić* case, Initial Indictment and Judgment at § 280.

[46] Human Rights Committee, General Comment No. 16 to the ICCPR, at art. 3.

[47] ICRC Rule 55. Moreover, through its resolutions 2165 (2014), 2191 (2014), and 2258 (2015), the Security Council has authorised the unconditional delivery of humanitarian assistance including medical assistance throughout the Syrian Arab Republic to besieged and hard-to-reach communities countrywide.

[48] ICRC Rule 53.

[49] Ibid. at Rule 56.

distinction.[50] Objects used for humanitarian relief operations such as humanitarian aid convoys must be respected and protected.[51] Attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of a besieged civilian population is further prohibited.[52]

Hospitals, medical units, and medical personnel

36. Hospitals, medical units, and medical personnel are afforded "special protection" under IHL as a result of their specific humanitarian function, and parties to a conflict must take additional, specific measures prior to targeting, directly or indirectly, such objectives.

37. Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances.[53] Medical personnel lose their protection if act outside their humanitarian function, for example by taking a direct participation in hostilities.[54] Punishing an individual for performing his/her medical duties compatible with medical ethics, such as committing acts of reprisal on doctors, is further prohibited.[55] Common Article 3 requires that the wounded and sick, including fighters rendered hors de combat, are collected and cared for, and specifically protects such persons from violence to life,[56] while customary IHL requires that parties to a non-international armed conflict may only treat injured persons differently based on medical grounds.[57]

38. Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances, however lose their protected status if they used outside their humanitarian function to commit acts harmful to the enemy.[58] Medical transports assigned exclusively to medical transportation such as ambulances must be respected and protected in all circumstances. Medical transports also lose their protection when being used outside their humanitarian function to commit acts harmful to the enemy.[59]

39. Attacks directed against medical personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.[60] The display of a distinctive emblem to signify the protected status of a location is not required however in conflicts where hospitals are deliberately targeted.[61] Stated another way, the emblem is not a compulsory condition for the right to protection. While medical personnel as well as hospitals, medical units, and transport may be made the object of attack when used outside their humanitarian function for military purposes. Protection only

[50] Ibid. at Rules 1 and 31.
[51] Ibid. at Rule 32.
[52] Ibid. at Rule 54.
[53] Ibid. at Rule 25.
[54] Ibid.
[55] Ibid. at Rule 26.
[56] See Article 3 Common to the Geneva Conventions, available in, e.g., International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 at Art. 3.
[57] ICRC Rule 110.
[58] Ibid at Rule 28.
[59] Ibid at Rule 29.
[60] Ibid at Rule 30.
[61] Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 17 October 1987, at ¶ 4742, available at www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf. The Commission has determined that "Government forces targeted hospitals and medical clinics in areas not under their control" in Aleppo city. See A/HRC/31/68, at para. 60.

ceases after a warning has been given, with a reasonable time-limit where appropriate, and after such warning has remained unheeded.[62]

Prohibited weapons

(a) Chemical weapons

40. The Syrian Arab Republic ratified the Chemical Weapons Convention (CWC) in 2013, following findings by the Organisation for the Prohibition of Chemical Weapons that Government forces had used chlorine bombs at an earlier phase in the conflict.

41. The use of chemical weapons are prohibited in both international and non-international conflicts as they cause superfluous injury and unnecessary suffering and are by their very nature indiscriminate because the effects cannot be limited in time and space.[63]

42. The use of weapons in densely-populated areas which are by nature indiscriminate and whose effects cannot be limited as required by international humanitarian law is prohibited.[64] As the dispersal pattern of gas found in chlorine bombs cannot be controlled, their use throughout residential areas in eastern Aleppo city amounts to the war crime of indiscriminate attacks in a civilian populated area. Certain state practice further prohibits the use of chemical weapons as being of a nature to cause superfluous injury or unnecessary suffering.[65]

(b) Cluster munitions

43. Cluster munitions are defined as "a conventional munition that is designed to disperse or release explosive sub-munitions each weighing less than 20 kilograms, and includes those explosive sub-munitions."[66] Such weapons typically have a wide dispersal pattern and high dud rate which continues to endanger civilians years after a cessation of hostilities.

44. Neither the Syrian Arab Republic nor the Russian Federation are states party to the Convention on Cluster Munitions. Nevertheless, the use of cluster munitions in civilian-populated, urban areas violates customary IHL principles of distinction[67] and proportionality,[68] due to the wide dispersal pattern and high dud rate noted above. When used in densely-populated areas such weapons are inherently indiscriminate.[69]

(c) Incendiary munitions (including incendiary cluster munitions)

45. The anti-personnel use of incendiary weapons is prohibited, unless it is not feasible to use a less harmful weapon to render a person hors de combat.[70] Particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to

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[62] ICRC Rule 28.
[63] Ibid. at Rule 74.
[64] Ibid. at Rules 12 and 71.
[65] Ibid. at Rule 70.
[66] Convention on Cluster Munitions, CCM/7, Dublin, 30 May 2008, at art. 2, available at http://www.unog.ch/80256EDD006B8954/(httpAssets)/CE9E6C29A6941AF1C12574F7004D23A5C/$file/ccm77_english.pdf.
[67] ICRC Rules 1 and 7.
[68] Ibid. at Rule 14.
[69] Ibid. at Rules 11, 12, and 71. See also the United Nations Sub-Commission on Human Rights, Res. 1996/16 and UN Secretariat, Existing rules of international law concerning the prohibition or restriction of use of specific weapons, Survey, at § 380.
[70] ICRC Rule 85.

civilians, and damage to civilian objects when incendiary weapons are used in armed conflict.[71]

Human shields

46. The use of human shields has been defined as "the placement or detention of persons in areas where they may be exposed to combat operations, for the purpose of rendering certain areas or activities immune from military operations or armed attack . . ."[72] Notably "[t]he prohibition of the use of human shields is not dependent on actual harm or attack,"[73] but only that the perpetrator must intend to shield a military objective from attack or shield, favour, or impede military operations."[74]

47. The deliberate violation of the obligation to take all feasible precautions against the effects of attacks is often related to the use of human shields. With respect to non-international armed conflicts, such practice is prohibited by the requirement that parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.[75] In addition, international case law has confirmed the obligation under international human rights law to take positive steps to protect life.[76] While IHRL does not explicitly prohibit the use of human shields, this practice would constitute, among other violations, a violation of the right to not be arbitrarily deprived of the right to life.

Use of civilian buildings for military purposes

48. Warring parties are required, to the extent feasible, to avoid locating military objectives within or near densely populated civilian areas.[77]

Treatment and Care of the Wounded and Sick

49. A "double-tap" airstrike is one in which a second attack on a target/area follows shortly after the first, having the effect of killing and injuring those who came to provide aid to, mourn, or remove bodies of the victims of the first attack. Double-tap airstrikes may therefore violate the IHL obligation to collect and care for the wounded and sick.[78] The presence of humanitarian aid workers carrying out their humanitarian function during a "double-tap" airstrike may also constitute a violation of the obligations to respect and protect civilian humanitarian relief personnel,[79] as well as to respect and protect objects used for humanitarian relief operations such as humanitarian aid convoys.[80]

Forced displacement

50. Parties to a non-international armed conflict may not order the displacement of a civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.[81]

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[71] ICRC Rule 84.
[72] ICTY, *Prosecutor v. Radovan Karadžić*, Judgement - Four volumes compiled, IT-95-5/18-T, 24 Mar 2016, at p. 199, para. 525 (internal citations omitted).
[73] Ibid. (internal citations omitted).
[74] Ibid. at para. P. 199-200, para 526 (internal citations omitted).
[75] ICRC Rule 22.
[76] See, e.g., Ibid. at Commentary to Rule 97.
[77] Ibid. at Rule 23.
[78] Ibid. at 110; see also Common Art. 3.
[79] Ibid. at Rules 1 and 31.
[80] ICRC Rule 32.
[81] Ibid. at Rule 129(b).

51. The United Nations Economic and Social Council's Guiding Principles on Internal Displacement provide secondary obligations including by noting that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.[82] The authorities undertaking displacement must further ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.[83]

Forced conscription

(a) Adults

52. The Constitution of the Syrian Arab Republic in its article 46 states that "[c]ompulsory military service shall be a sacred duty and is regulated by a law" for all men over the age of 18 years. Syrian women are not required to perform compulsory service, though they may volunteer to serve. Conscientious objection to military service is based on the right to freedom of thought, conscience and religion, set out in the Universal Declaration of Human Rights and the ICCPR.[84] The right to conscientious objection to military service is a right implicitly derived from an interpretation of the right to freedom of thought, conscience and religion, and the Human Rights Committee has interpreted the right to freedom of thought, conscience, and religion and its application to in relation to conscientious objection to military service.[85] Forced conscription may therefore violate this right.

(b) Minors

53. The Convention on the Rights of the Child ("CRC"), to which the Syrian Arab Republic is a state party, generally defines a child as any person under the age of 18.[86] With respect to armed conflict, however, the Convention draws its language from the Protocols to the Geneva Conventions, and consequently sets the lower age of 15 as the minimum for recruitment or participation in armed forces, though, when between 15 and 18 years, states parties shall endeavour to give priority to those children who are oldest.[87] The Optional Protocol to the CRC, which the Syrian Arab Republic adopted in 2003, sets – without reservation – 18 years the minimum age for direct participation in hostilities, for recruitment into armed groups, and for compulsory recruitment by governments.

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[82] See Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, Annex, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, at Principle 3.

[83] Ibid. at Principle 7(2).

[84] Universal Declaration of Human Rights, 10 December 1948, 217 A (III), at art. 18; see also ICCPR at. art. 18.

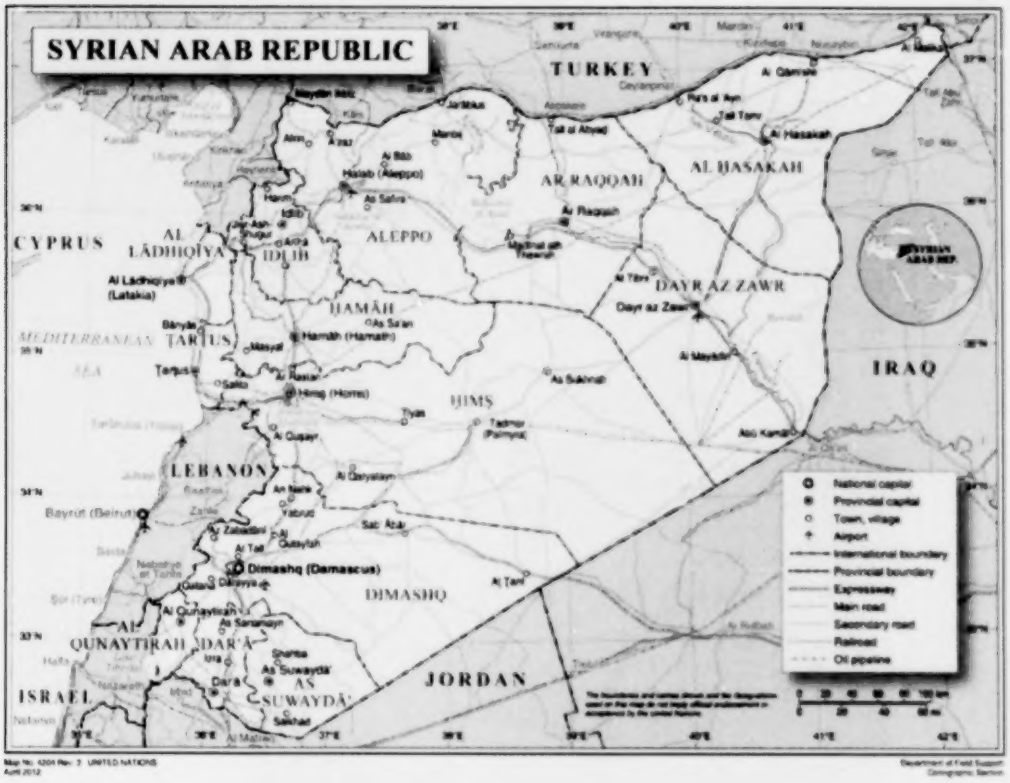
[85] In General Comment No. 22 (1993), at para. 11, the Human Rights Committee stated "[t]he Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief."

[86] Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, at art. 1.

[87] Ibid. at. art. 38(3).

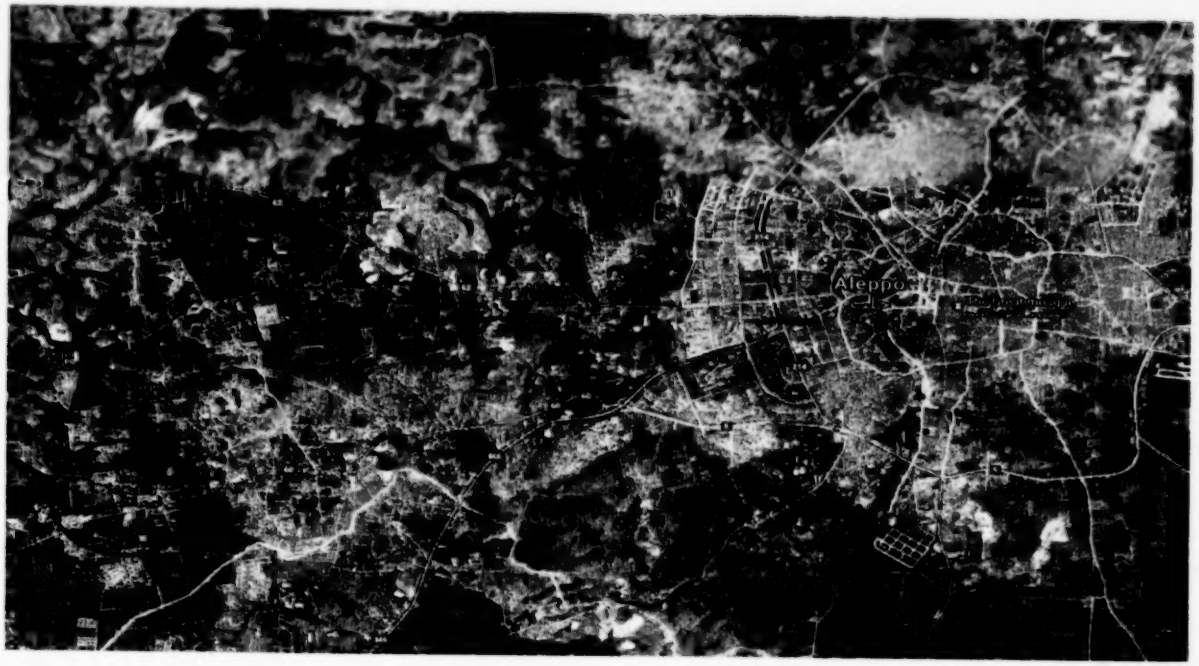
Annex II

Map of the Syrian Arab Republic



Annex III

Map of Aleppo city and environs



Annex IV

Map of Aleppo city